

ORDINANCE NO. 2018-01

AN ORDINANCE ESTABLISHING A PROCEDURE FOR CONDEMNING DILAPIDATED STRUCTURES AND THE PROCEDURE FOR BOARDING AND SECURING STRUCTURES WITHIN THE CITY LIMITS OF COMMERCE; ESTABLISHING PUNISHMENT FOR VIOLATION OF THE ORDINANCE AND SETTING FORTH AN APPEAL PROCESS.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COMMERCE, OKLAHOMA:

• **ARTICLE V: DILAPIDATED BUILDINGS**

• **Sec. 8-81. - Definitions.**

For the purposes of this chapter:

- (1) "*Director*" means the code enforcement director or his designee;
- (2) "*Boarding and securing*" or "*boarded and secured*" means the closing, boarding or locking of any or all exterior openings so as to prevent entry into the structure;
- (3) "*Cleaning*" or "*cleaned*" means the removal of trash or weeds from the premises;
- (4) "*Dilapidated building*" as defined by 11 O.S. § 22-112(C), as presently in effect and as the same may be here and after amended.
- (5) "*Unsecured building*" means a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety or welfare of the general public.

State Law reference— Similar provisions, 11 O.S. §§ 22-112, 22-112.1.

• **Sec. 8-82. - Report to be made.**

Any officer or employee of this city who discovers or receives a report of a dilapidated building which has become detrimental to the health, benefit and welfare of the public and the community or creates a fire hazard to the danger of property, shall report such conditions to the director.

• **Sec. 8-83. - Condemnation of dilapidated buildings, notice, removal, lien, payment.**

The director may cause dilapidated buildings within the city limits to be torn down and removed, in accordance with the following procedure:

- (1) At least ten (10) days' notice shall be given to the owner of the property before the city takes action or holds a hearing as provided herein. A copy of the notice shall be posted on the property to be affected. In addition, a copy of the notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the city shall obtain a certificate of mailing from the postal service, which certificate shall indicate the date of mailing and the name and address of the recipient. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property, or by publication in a newspaper of general circulation within the city limits of the City of Commerce. Such notice shall be published once not less than ten (10) days prior to any hearing or action to be taken pursuant to this section;
- (2) A hearing shall be held by the director to determine whether the property is dilapidated and has thereby become detrimental to the health, benefit and welfare of the public and the community, or creates a fire hazard to the danger of property;
- (3) If the director finds that the condition of the property constitutes a detriment or a hazard, and that the property would be benefited by the removal of such conditions, the director may cause the dilapidated building to be torn down and removed, and shall fix reasonable dates for the commencement and completion of the work. The city clerk shall immediately file a notice of lien with the county clerk describing the property, the findings of the director at the hearing, and stating that the city claims a lien on the property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of the notice;
- (4) If the work is not performed by the property owner within the dates fixed by the director, the director shall direct the tearing down and removal, be done by one of the following methods:
 - a. By the city;
 - b. On a private contract basis, in which case it shall be awarded to the lowest and best bidder;
- (5) After the building has been torn down and removed, the director shall determine the actual cost of the dismantling and removal of dilapidated buildings, and any other expenses as may be necessary in conjunction therewith, to include a \$400.00 administrative fee. The city clerk shall forward a statement of such actual cost attributable to the dismantling and removal and a demand for payment by mail to the property owner at the address specified in this section. In addition, a copy of the statement shall be mailed to any mortgage holder at the address specified in this section. At the time of mailing of the statement of costs to any property owner or mortgage holder, the city shall obtain a certificate of mailing from the postal service, which certificate shall indicate the date of mailing and the name and address of the recipient;
- (6) When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien, but if payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the City shall have and perfect a lien in the amount equal to the actual cost of the dismantling and removal of dilapidated buildings, and any other expenses as may be necessary in conjunction therewith, to include a \$400.00 administrative fee, in the manner as prescribed by State law.

- (7) The provisions of this section shall not apply to any property zoned and used for agricultural purposes; and;
- (8) Nothing in this section shall prevent the city from otherwise abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the public health, safety or welfare.

State Law reference— Removal of dilapidated buildings, 11 O.S. § 22-112.

- **Sec. 8-84. - Boarding and securing dilapidated buildings, procedure.**

The city may cause the building to be boarded and secured in accordance with the following procedure. The city may determine that a building is unsecured and order that such building be boarded and secured in the manner provided for in this section even though such building has not been declared by the city to be dilapidated.

- (1) Pursuant to authority granted by Section 1-1011 of Title 63 of the Oklahoma Statutes, the city shall have the authority to order the owner or occupant of any private premises in the city to remove from such premises, within twenty-four (24) hours, at his own expense, any source of filth, cause of sickness, condition conducive to the breeding of insects or rodents that might contribute to the transmission of disease, or any other condition adversely affecting the public health, to board such building in the case of exigent circumstances. If said removal or said boarding is not done within twenty-four (24) hours, the city may chose to remove the nuisance or board the premises, within such time as may be reasonable. Such order shall be in writing and may be served personally on the owner or occupant of the premises, or authorized agent thereof, by the city or by a police officer, or a copy thereof may be left at the last usual place of abode of the owner, occupant or agent, if known and within the state. If the premises are unoccupied and the residence of the owner, occupant or agent is unknown or is outside the state, the order may be served by posting a copy thereof on the premises or by publication in at least one issue of a newspaper having a general circulation within the City of Commerce.
- (2) In the absence of exigent circumstances and before the city orders such action, that such unsecured building is to be boarded and secured, notice shall be given by mail to any property owners and mortgage holders as provided in 8-83 of this Code. At the time of mailing of notice to any property owner or mortgage holder, the director or his designee shall obtain a certificate of mailing from the U.S. Postal Service, which certificate shall indicate the date of the mailing and the name and address of the recipient. A copy of the notice shall also be posted on the property to be affected. However, if neither the property owner nor mortgage holder can be located, notice maybe given by posting a copy of the notice on the property or by publication in a newspaper of general circulation within the city limits of the City of Commerce. Such notice shall be published one time, not less than ten (10) days prior to any hearing or action by the city pursuant to the provisions of this section. If the director anticipates summary abatement of a nuisance in accordance with the provisions of this section, the notice shall state that: any subsequent need for boarding and securing the building within a six-month period after the initial boarding and securing of the building pursuant to such notice may be summarily boarded and secured by the city, that the costs of such boarding and securing shall be assessed against the owner, and that a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner or mortgage holder;
- (3) The owner of the property may give his written consent to the city authorizing the boarding and securing of such unsecured building and to the payment of any costs

incurred thereby. By giving the written consent, the owner waives his right to a hearing as provided in this section;

- (4) If the property owner does not give his written consent to such actions, a hearing may be held by the director to determine whether the boarding and securing would promote and benefit the public health, safety or welfare. Such hearing maybe held in conjunction with a hearing on the accumulation of trash or the growth of weeds or grass on the premises of such unsecured building held pursuant to this Code. In making such determination, the director shall apply the following standard: The director may order the boarding and securing of the unsecured building when the boarding and securing thereof would make such building less available for transient occupation, decrease a fire hazard created by such building, or decrease the hazard that such building would constitute an attractive nuisance to children. Upon making such a determination the director may order the boarding and securing of the unsecured building;
- (5) After the director orders the boarding and securing of such unsecured building, the city clerk shall immediately file a notice of unsecured building and lien with the county clerk describing the property, stating the findings of the city at the hearing at which the building was determined to be unsecured, and stating that the city claims a lien on the property for the costs of boarding and securing the building and that such costs are the personal obligation of the property owner from and after the date of filing the notice;
- (6) Pursuant to the order of the director, the agents of the city are granted the right of entry on the property for the performance of the boarding and securing of such building and for the performance of all necessary duties as a governmental function of the city;
- (7) After an unsecured building has been boarded and secured, the director shall determine the actual costs of such actions and any other expenses that may be necessary in conjunction therewith including the cost of the notice and mailing. The city clerk shall forward a statement of the actual costs attributable to the boarding and securing of the unsecured building and a demand for payment of such costs, by mail to any property owners and mortgage holders as provided in section 8-83 of this Code. At the time of mailing of the statement of costs to any property or mortgage holder the city clerk shall obtain a certificate of mailing from the postal service, which certificate shall indicate the date of mailing and the name and address of the recipient;
- (8) If the city boards and secures any unsecured building, the cost to the property owner shall not exceed the actual cost of the labor, materials and equipment required for the performance of such actions. If such actions are done on a private contract basis, the contract shall be awarded to the lowest and best responsible bidder;
- (9) When payment is made to the city for costs incurred, the city clerk shall file a release of lien, but if payment attributable to the actual costs of the boarding and securing of the unsecured building is not made within thirty (30) days from the date of the mailing of the statement to the owner of the property, the city clerk shall forward a certified statement of the amount of the costs to the county treasurer of the county in which the property is located. The costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until fully paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date the notice of unsecured building and lien is filed with the office of the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property, and shall continue until the costs and interest are fully paid. At any time prior to collection as provided herein, the city may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. Upon receipt of payment in full, the city clerk shall forward to the office of the county treasurer a notice of such payment and direct discharge of the lien;

- (10) If the city causes a structure to be boarded and secured, in accordance with the procedures provided for in this section, any subsequent need for boarding and securing the property within a six-month period may be declared a nuisance and may be summarily abated without prior notice to the property owner. At the time of such summary abatement the city clerk shall notify the property owner of the boarding and securing and of the costs thereof. This section shall not apply if the records of the county clerk show that the property was transferred after notice was given pursuant to this section.

- **Sec. 8-85. - Penalty.**

Any person who shall violate any provision of this chapter, shall be guilty of an offense against the city and upon conviction thereof shall be punished by a fine of \$400.00.

- **Sec. 8-86. - Administration and appeal.**

A. The City Administrator or his or her designee(s) shall serve as the administrative officer or administrative body to carry out the duties of the city council described in § 22-112(B), § 22-112.1(C)(8) and § 22-112.4(D), all as presently in effect and as the same may be amended in the future by the state legislature.

B. The City Council shall serve as the appellate board in the event of an appeal from any order of the administrative officer or administrative body and such appeal shall be conducted in the manner provided in Sec. 8-86.

Sec. 8-86. - [Appeals procedure.]

Any person directly affected by a decision of the City Administrator, or his or her designees, or a code official, or a notice or order issued hereunder shall have the right to appeal to the City Council, provided that a written application for appeal is filed and received by the City Clerk within ten (10) days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this chapter or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard. The City Council shall schedule the appeal for hearing not later than the next regularly scheduled meeting for which notice and agenda may be lawfully posted, or at a special meeting to be held within twenty (20) days of filing of the appeal. The appeal hearing shall be open to the public and held pursuant to a posted agenda item, although the City Council may otherwise consult with the City Attorney and other authorized attendees in a lawfully scheduled and posted executive session. The manner of conducting the hearing shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received. The City Council shall modify or reverse the decision of the Code Official only by a concurring vote of a majority of the total number of seated City Council members. City Administrator shall take prompt action in accordance with the decision of the City Council.

PASSED AND APPROVED this 10 day of April, 2018.

CITY OF COMMERCE, OKLAHOMA



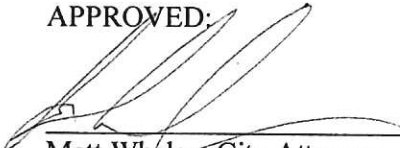
Michael Hart,
Mayor

ATTEST:



Shonna Stovall, City Clerk

APPROVED:



Matt Whalen, City Attorney